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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte BORIS GALITSKY and EUGENE WILLIAM McKENNA

Appeal 2015-006193
Application 12/119,465
Technology Center 2100

Before JOHN A. JEFFERY, KRISTEN L. DROESCH, and JOHN P. PINKERTON, *Administrative Patent Judges*.

JEFFERY, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's decision to reject claims 6, 8–11, 17, and 19–34. We have jurisdiction under 35 U.S.C. § 6(b). We reverse.

STATEMENT OF THE CASE

Appellants' invention (1) recommends products to users based on topical and sentiment data extracted from documents, and (2) provides users quotes from documents relevant to features of interest. *See generally* Spec. ¶ 1.

Claim 6 is illustrative:

> 6. A method for extracting quotations related to a product from a document, comprising:
>
> building a span query relevant to a feature associated with the product and a sentiment about the feature by:
>
> building syntactic templates from a lexicography relevant to the feature and the sentiment about the feature, wherein each syntactic template corresponds to multiple phrasings of the same meaning, and
>
> determining a first semantic template relevant to the syntactic templates;
>
> receiving a document;
>
> applying the span query to the document to generate a span query result, wherein the span query result includes a quotation from the document relevant to
>
> the feature and the sentiment about the feature, the quotation satisfying the first semantic template and including words within relative positions as constrained by the span query; and
>
> storing the span query result.

THE REJECTIONS[1]

The Examiner rejected claims 6, 8–11, 22, 23, 26, and 28 under 35 U.S.C. § 103(a) as unpatentable over Bandaru (US 2008/0133488 A1; June 5, 2008) and Liu (US 2008/0294637 A1; Nov. 27, 2008). Final Act. 4–9.[2]

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[1] Because the Examiner withdrew a previous rejection under § 112 (Ans. 2), that rejection is not before us.

[2] Throughout this opinion, we refer to (1) the Final Rejection mailed May 22, 2014 ("Final Act."); (2) the Appeal Brief filed February 6, 2015 ("App. Br."); (3) the Examiner's Answer mailed April 7, 2015 ("Ans."); and (4) the Reply Brief filed June 4, 2015 ("Reply Br.").

The Examiner rejected claims 17, 19–21, 24, 25, 27, and 29–34[3] under 35 U.S.C. § 103(a) as unpatentable over Liu and Bandaru. Final Act. 10–17.

THE OBVIOUSNESS REJECTION OVER BANDARU AND LIU

Regarding independent claim 6, the Examiner finds that Bandaru builds a "search structure" involving "(adj, named entity)" pairs in Figure 11 that are relevant to a feature associated with a product and an adjective-based sentiment about the feature by (1) building pattern-based syntactic templates, and (2) determining a first semantic template in Figure 6 relevant to the syntactic templates. Final Act. 4–5. According to the Examiner, Bandaru applies this "search structure" to a received document to generate a query result including a relevant document quotation satisfying the semantic template, and whose words within relative positions are constrained by the "search structure." Final Act. 5–6.

Although the Examiner acknowledges that Bandaru does not build a span query or generate a span query result, the Examiner cites Liu's distance-based technique as teaching this feature in concluding that the claim would have been obvious. Final Act. 6–7.

Appellants argue that the cited prior art does not teach or suggest the recited "span query" as defined in the Specification, namely "a query that combines the constraint on occurrence of words with the constraints of mutual positions of the words." App. Br. 11–18; Reply Br. 2–4. According

[3] Although claim 33 depends on itself, we nevertheless presume that claim 33 depends from claim 32 for purposes of this appeal. We leave to the Examiner to consider whether this inconsistency renders the claim indefinite under § 112(b) after our decision.

to Appellants, Liu's distance-based method to filter search results differs from the recited span query application, as does Bandaru's sentence-by-sentence approach to extract quotations. App. Br. 14–18; Reply Br. 3–4. Appellants add that there is no proper motivation to combine Bandaru and Liu as proposed. App. Br. 19.

ISSUE

Under § 103, has the Examiner erred in rejecting claim 1 by finding that Bandaru and Liu collectively would have taught or suggested building a span query, and applying it to a received document to generate the recited span query result?

ANALYSIS

We begin by noting, as do Appellants, that the key disputed term, "span query," is defined in the Specification as "a query that combines the constraint on the *occurrence* of words with the constraints of *mutual positions* of the words." Spec. ¶ 29 (emphasis added). Our emphasis underscores two key constraints of a span query, namely the words' occurrence *and* mutual positions. As the Specification indicates, the query "put-1-down," that allows for zero or one word between "put" and "down," is an example of a span query. *Id.* We, therefore, construe the term "span query" based on the Specification's explicit definition of the term.

The Examiner, however, does not construe the recited "span query" according to this definition, but rather with its plain meaning, namely "distance query." Ans. 2–3. In arriving at this construction, the Examiner

reminds Appellants that limitations from the Specification are not read into the claims. *Id.*

The Examiner's construction is problematic. To be sure, claims are interpreted broadly, but reasonably, in light of the Specification without importing limitations from the Specification into the claims. *See Phillips v. AWH Corp.*, 415 F.3d 1303, 1323 (Fed. Cir. 2005) (en banc).

But where, as here, Appellants act as their own lexicographer by clearly and unambiguously defining the term "span query" with a specific meaning, the term must be so construed—even if it departs from its ordinary and customary meaning in the art. *See Multiform Desiccants Inc. v. Medzam, Ltd.*, 133 F.3d 1473, 1477 (Fed. Cir. 1998); *see also Helmsderfer v. Bobrick Washroom Equip.*, Inc., 527 F.3d 1379, 1381 (Fed. Cir. 2008) ("A patentee may act as its own lexicographer and assign to a term a unique definition that is different from its ordinary and customary meaning; however, a patentee must clearly express that intent in the written description.") (citations omitted).

Therefore, the Examiner's construction of the recited "span query" as merely a "distance query" (Ans. 3) ignores the clear and unambiguous definition of "span query" in paragraph 29 of the Specification that so limits its construction. The Examiner's rejection is, therefore, problematic for that reason alone.

Turning to the rejection, the Examiner acknowledges that Bandaru does not build nor apply a span query—even under the Examiner's erroneous "distance query" interpretation—and cites Liu to cure this perceived deficiency. Final Act. 7; Ans. 3–4. Liu filters search results by calculating the distance between keywords and a keyword-based origin. Liu

¶¶ 223, 225, 233–40. Even assuming, without deciding, that this distance-based filtering technique somehow involves a "span query" under the Examiner's *plain meaning* interpretation (Ans. 3–4), we still fail to see—nor has the Examiner shown—how Liu teaches or suggests a "span query" as *defined* in paragraph 29 of the Specification which, as noted above, requires constraints on the occurrence *and* mutual positions of particular words. To the extent that Liu's distance-based method involves these two constraints, we cannot say on this record. Nor will we speculate in that regard here in the first instance on appeal.

We do note, however, that Appellants acknowledge that Bandaru's quotation-extraction technique assumes that entities and adjectives matchable to a given pattern are in the *same sentence*. Reply Br. 4–5. To the extent that this sentence-based constraint suggests constraints on the occurrence *and* mutual positions of particular words (i.e., that they appear in the same sentence) to constitute a "span query" as defined in the Specification,[4] such a position has not been articulated on this record, nor will we speculate in that regard here in the first instance on appeal. Rather, we leave that question to the Examiner to consider after this decision.

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[4] Notably, some sentences may be quite short—even two words. *See, e.g., Sentence Patterns*, The Writing Center at UNC-Chapel Hill, *at* http://writingcenter.unc.edu/handouts/sentence-patterns (citing examples of two-word sentences). To the extent that Bandaru's sentence-based query can apply to two-word sentences, and that such a query combines constraints on the words' occurrences and mutual positions (i.e., their adjacency to each other in a two-word sentence) to constitute a "span query," such a position has not been articulated on this record, nor will we speculate in that regard here in the first instance on appeal. We leave this question to the Examiner to consider after this opinion.

So even assuming, without deciding, that the references are combinable as the Examiner proposes (Final Act. 7; Ans. 4), the Examiner has still not shown that the cited prior art teaches or suggests building and applying a span query to a received document to generate a span query result as claimed.

Therefore, we are persuaded that the Examiner erred in rejecting (1) independent claim 6, and (2) dependent claims 8–11, 22, 23, 26, and 28 for similar reasons. Since this issue is dispositive regarding our reversing the rejection of these claims, we need not address Appellants' other arguments.

THE OBVIOUSNESS REJECTION OVER LIU AND BANDARU

We likewise will not sustain the Examiner's obviousness rejection of claims 17, 19–21, 24, 25, 27, and 29–34 over Liu and Bandaru. Fin. Act. 10–17. Although the Examiner transposes the base and secondary references in rejecting independent claims 17 and 30 despite their reciting limitations commensurate with those in independent claim 1, the Examiner nevertheless finds that Liu's "distance query" is analogous to the recited span query (Final Act. 10–11, 14–15; Ans. 5)—a finding that is based on an erroneous plain-meaning interpretation as noted previously in connection with claim 1. Therefore, for the reasons noted above, we are persuaded that the Examiner erred in rejecting (1) independent claim 17; (2) independent claim 30 which recite commensurate limitations; and (3) dependent claims 19–21, 24, 25, 27, 29, and 31–34 for similar reasons. Because this issue is

dispositive regarding our reversing the rejection of these claims, we need not address Appellants' other arguments.[5,6]

CONCLUSION

The Examiner erred in rejecting claims 6, 8–11, 17, and 19–34 under § 103.

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[5] We note, however, that Appellants' arguments regarding resolving a conflict by applying defeasible logic programming in connection with dependent claim 19 are inconsistent with the language of that claim, but rather are consistent with claim 31 which was grouped with claim 19. *See* App. Br. 24. Based on the claim language, Appellants' arguments appear to be directed to claims 21 and 31 (and perhaps claim 10)—not claim 19.

[6] We also note that the processor in independent claim 30 is recited solely in functional terms and, therefore, raises the question of whether such a processor lacks sufficient structure to render the claim equivalent to a means-plus-function claim under § 112(f). *See* MPEP § 2181 (A) (discussing guidelines for determining whether recited "non-structural generic placeholders" are simply substitutes for "means" terms to overcome the presumption that means-plus-function treatment does not apply when claims lack the term "means"). Notably, expanded panels of this Board have held that the term "processor" is such a non-structural generic placeholder sufficient to invoke functional claiming under § 112(f). *See Ex parte Lakkala*, No. 2011-001526 (PTAB Mar. 13, 2013) (informative); *Ex parte Erol*, No. 2011-001143 (PTAB Mar. 13, 2013) (informative); *Ex parte Smith*, No. 2012-007631 (PTAB Mar. 14, 2013) (informative). The Examiner, however, did not articulate such a construction, nor will we speculate in that regard here in the first instance on appeal. We, therefore, leave that question to the Examiner to consider after our opinion, as well as the related question of whether the single processor limitation in claim 30 is equivalent to a single means limitation that is not enabled for its scope under § 112(a). *See Ex parte Rodriguez*, 92 USPQ2d 1395, 1406–11 (BPAI 2009) (precedential) (discussing functional claiming and scope of enablement); *see* also MPEP § 2164.08(a) (citing *In re Hyatt*, 708 F.2d 712 (Fed. Cir. 1983)).

DECISION

The Examiner's decision rejecting claims 6, 8–11, 17, and 19–34 is reversed.

REVERSED